



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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June 27, 2003

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STEVE WESTLY
State Controller, Sacramento

TIMOTHY W. BOYER
Interim Executive Director

Dear Interested Party :

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the July 9, 2003, Business Taxes Committee meeting. This meeting will address the proposed Regulation 1598.1, *Diesel Fuel Prepayment Exemption*.

Action 1 on the Agenda consists of items on which we believe industry and staff are in full agreement. If you wish to have Action 1 discussed fully at the Committee meeting, you must contact a Board Member prior to July 1, 2003 to request removal of the item from the Consent Agenda. In addition, please notify Ms. Charlotte Paliani, Program Planning Manager, after you contact a Board Member's Office. Ms. Paliani may be reached at (916) 324-1825.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Board Meetings and Committee Information" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/meetings.htm#two>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m.** on **July 9, 2003** in Room 121 at the address shown above.

Sincerely,

Ramon J. Hirsig
Deputy Director
Sales and Use Tax Department

RJH: ph

Enclosures

cc: (all with enclosures)

Honorable Carole Migden, Chairwoman
Honorable Claude Parrish, Vice Chairman
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable John Chiang, Member, Fourth District
Honorable Steve Westly, State Controller, C/O Ms. Marcy Jo Mandel
Ms. Carole Ruwart, Board Member's Office, First District (MIC 71)
Ms. Sabina Crocette, Board Member's Office, First District (MIC 71)
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)
Mr. Romeo Vinzon, Board Member's Office, Third District (via e-mail)
Mr. Matthew Zylowski, Board Member's Office, Third District
Ms. Margaret Pennington, Board Member's Office, Second District (MIC 78)
Mr. Tim Treichelt, Board Member's Office, Second District (via e-mail)
Mr. Lee Williams, Board Member's Office, Second District (via e-mail)
Mr. John Thiella, Board Member's Office, Fourth District (MIC 72)
Mr. Timothy Boyer (MIC 73)
Acting Chief Counsel (MIC 83)
Ms. Janice Thurston (MIC 82)
Mr. Warren Astleford (MIC 82)
Ms. Trecia Nienow (MIC 82)
Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Steve Ryan (via e-mail)
Mr. Rey Obligacion (via e-mail)
Ms. Jennifer Willis (MIC 70)
Mr. Dan Tokutomi (via e-mail)
Mr. Dave Hayes (MIC 67)
Ms. Charlotte Paliani (MIC 92)
Mr. Joseph Young (via e-mail)
Mr. Jerry Cornelius (via e-mail)
Mr. Jeffrey L. McGuire (via e-mail)
Mr. Vic Anderson (MIC 40 and via e-mail)
Mr. Larry Bergkamp (via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Laureen Simpson (MIC 50)
Mr. Peter Horton (MIC 50)
Mr. Todd MacMurray (MIC 50)

AGENDA —July 9, 2003 Business Taxes Committee Meeting
Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption
Revised July 1, 2003

Formal Issue Paper Number 03-007

Action 1 — Agreed Item Agenda, pages 2-6	Should the Board adopt proposed Regulation 1598.1, <i>Diesel Fuel Prepayment Exemption</i> , to implement the provisions of Senate Bill 1901, which provides an exemption from the prepayment of sales tax on certain sales of diesel fuel?
Action 2 – Authorization to Publish	Recommend publication of proposed Regulation 1598.1 as adopted in the above action. Operative Date: October 9, 2002 Implementation: 30 days following OAL approval

AGENDA —July 9, 2003 Business Taxes Committee Meeting
Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption
Revised July 1, 2003

Action Item	Staff and Industry's Proposed Regulatory Language
Action 1 — Agreed Item	<p><u>(a) DEFINITIONS.</u></p> <p>(1) "Bulk deliveries" mean transfers of diesel fuel into storage tanks holding 500 gallons or more.</p> <p>(2) "Cardlock, keylock, or other unattended mechanism" means an unattended, completely automated fueling station at which a purchaser obtains diesel fuel through use of a coded card or key and an access code. Charges for sales of diesel fuel to customers are usually consolidated at a central location and periodically invoiced to the purchaser.</p> <p>(3) A "diesel fuel consumer" or "diesel fuel consumers" mean a person or persons that use diesel fuel in a manner that qualifies for the partial sales and use tax exemption set forth in Revenue and Taxation Code section 6357.1 and Regulation 1533.2, <i>Diesel Fuel Used in Farming Activities or Food Processing</i>.</p> <p>(4) "Diesel fuel," for purposes of the imposition of the prepayment of sales tax, is defined in Revenue and Taxation Code section 6480(c) (by reference to Revenue and Taxation Code section 60022) and means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.</p> <p><u>Diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.</u></p> <p><u>Diesel fuel does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.</u></p> <p>(5) "Qualified retailer" means a person who meets the requirements of subdivisions (b)(1) through (b)(5).</p> <p>(6) "Seller" means either the supplier or the wholesaler, as those terms are defined in Revenue and Taxation Code section 6480(c), that sells diesel fuel to a qualified retailer.</p> <p>(7) "Total taxable sales" means the gross receipts from the sale of tangible personal property subject to tax, including sales of diesel fuel.</p> <p><u>(b) APPLICATION OF TAX.</u> Commencing on and after October 9, 2002, a seller of diesel fuel is not required to collect the prepayment of sales tax on that percentage of diesel fuel specified in the retailer's diesel fuel prepayment exemption certificate that is otherwise required by Revenue and Taxation Code section 6480.1, provided the diesel fuel is sold to a retailer who:</p> <p>(1) Will resell the diesel fuel in the ordinary course of business.</p> <p>(2) Issues a diesel fuel prepayment exemption certificate to the seller as set forth in subdivision (c).</p> <p>(3) Sells diesel fuel to a diesel fuel consumer.</p>

AGENDA —July 9, 2003 Business Taxes Committee Meeting
Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption
Revised July 1, 2003

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><u>(4) During the calendar year immediately preceding any purchases of diesel fuel, sold diesel fuel to diesel fuel consumers in which the gross receipts from such sales exceeded 25 percent of that retailer's total taxable sales, and</u></p> <p><u>(5) Sold more than 50% of its diesel fuel through bulk deliveries or through a cardlock, keylock, or other unattended mechanism, or both.</u></p> <p><u>For purposes of calculating the percentage set forth in subdivision (b)(4) above, the numerator shall be the sum total of amounts entered on Form BOE 401GS line 10(e)(4) (<i>Amount Subject to the Diesel Fuel Used in Farming and Food Processing Exemption</i>) for each return filed during the preceding calendar year and the denominator shall be the sum total of amounts entered on line 14(a) (<i>Transactions Subject to County Tax</i>) for each return filed during the preceding calendar year.</u></p> <p><u>(c) PREPAYMENT EXEMPTION CERTIFICATE.</u></p> <p><u>(1) IN GENERAL. A seller of diesel fuel who takes a diesel fuel prepayment exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified retailer, is relieved from the liability for the sales tax prepayment subject to the exemption under this regulation, or the duty of collecting the sales tax prepayment subject to exemption under this regulation. A diesel fuel prepayment exemption certificate will be considered timely if it is taken any time before the seller bills the qualified retailer for the diesel fuel, any time within the seller's normal billing or payment cycle, or any time at or prior to delivery of the diesel fuel to the qualified retailer. A diesel fuel prepayment exemption certificate which is not taken timely will not relieve the seller of the liability for the sales tax prepayment excluded by the exemption; however, the seller may present satisfactory evidence to the Board that the seller sold the diesel fuel to a qualified retailer. A diesel fuel prepayment exemption under this part shall not be allowed unless the seller claims the exemption on its sales and use tax return for the reporting period during which the transaction subject to the diesel fuel prepayment exemption occurred. The diesel fuel prepayment exemption certificate form set forth in the Appendix may be used to claim the diesel fuel prepayment exemption.</u></p> <p><u>(2) BLANKET PREPAYMENT EXEMPTION CERTIFICATE. In lieu of requiring a diesel fuel prepayment exemption certificate for each transaction, a qualified retailer may issue a blanket diesel fuel prepayment exemption certificate. The diesel fuel prepayment exemption certificate form set forth in the Appendix may be used as a blanket diesel fuel prepayment exemption certificate. The diesel fuel prepayment exemption certificate in the Appendix may also be used as a specific diesel fuel prepayment exemption certificate if the qualified retailer provides the purchase order or sales invoice number and a precise description of the property being purchased. A blanket diesel fuel prepayment exemption certificate is only valid during the calendar year in which it is provided to the seller.</u></p> <p><u>(3) FORM OF PREPAYMENT EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the qualified retailer to the seller will be regarded as a diesel fuel prepayment exemption certificate with respect to the sale of diesel fuel if it contains all of the following essential elements:</u></p> <p><u>(A) The signature of the qualified retailer, qualified retailer's employee, or authorized representative of the qualified retailer.</u></p> <p><u>(B) The name, address and telephone number of the qualified retailer.</u></p>

AGENDA —July 9, 2003 Business Taxes Committee Meeting
Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption
Revised July 1, 2003

Formal Issue Paper Number 03-007

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><u>(C) The number of the seller's permit held by the qualified retailer.</u></p> <p><u>(D) A statement setting forth the requirements of subdivisions (b)(1) through (b)(5).</u></p> <p><u>(E) A statement of what percentage of total diesel fuel purchases will be resold to diesel fuel consumers.</u></p> <p><u>(F) Date of execution of document.</u></p> <p><u>(4) RETENTION AND AVAILABILITY OF PREPAYMENT EXEMPTION CERTIFICATES. A seller must retain each diesel fuel prepayment exemption certificate received from a qualified retailer who purchases diesel fuel for resale to diesel fuel consumers for a period of not less than four years from the date on which the qualified retailer claims an exemption for sales tax prepayment based on the diesel fuel prepayment exemption certificate. The Board may require, within 45 days of the Board's request, sellers to provide the Board access to any and all diesel fuel prepayment exemption certificates, or copies thereof, accepted for the purposes of supporting the diesel fuel prepayment exemption.</u></p> <p><u>(5) GOOD FAITH. A seller will be presumed to have taken a diesel fuel prepayment exemption certificate in good faith in the absence of evidence to the contrary. However, a diesel fuel prepayment exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel will not be sold to a retailer who meets the requirements of subdivisions (b)(1) through (b)(5), will not otherwise be used by diesel fuel consumers, or that the percentage listed on the exemption certificate for sales tax prepayment is inaccurate. A blanket diesel fuel prepayment exemption certificate utilized for sales occurring in a subsequent calendar year in which the blanket diesel fuel prepayment exemption certificate was initially provided to the seller is not accepted in good faith for sales occurring in that subsequent calendar year.</u></p> <p><u>(d) RETAILER'S LIABILITY FOR THE PAYMENT OF TAX.</u></p> <p><u>(1) A qualified retailer providing a diesel fuel prepayment exemption certificate pursuant to subdivision (c) is liable for the taxes imposed by the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, and the tax that is imposed under Revenue and Taxation Code section 6051.2 or 6201.2, or under section 35 of article XIII of the California Constitution on the sale of diesel fuel to diesel fuel consumers.</u></p> <p><u>(2) A qualified retailer providing a diesel fuel prepayment exemption certificate pursuant to subdivision (c) is liable for sales tax on any portion of the gross receipts derived from the sale of diesel fuel that is not sold to diesel fuel consumers.</u></p> <p><u>(3) A qualified retailer that is liable for the tax under the provisions of subdivisions (d)(1) or (d)(2) shall report and pay that tax with the sales and use tax return filed for the reporting period during which the qualified retailer sells the diesel fuel.</u></p> <p><u>(e) IMPROPER USE OF PREPAYMENT EXEMPTION CERTIFICATE.</u> Any person who gives a diesel fuel prepayment exemption certificate pursuant to this regulation for the purpose of evading the prepayment of sales tax on sales of diesel fuel that he or she knows at the time of sale do not qualify for the diesel fuel prepayment exemption is guilty of a misdemeanor punishable as provided in Revenue and Taxation Code section 7153. In addition, such person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each diesel fuel prepayment exemption certificate issued for personal gain or to evade the prepayment of sales tax.</p>

AGENDA —July 9, 2003 Business Taxes Committee Meeting
Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption
Revised July 1, 2003

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><u>(f) RECORDS. Adequate and complete records must be maintained by the seller and qualified retailer as evidence that the diesel fuel qualifies for the diesel fuel prepayment exemption.</u></p> <p><u>(g) OPERATIVE DATE. This regulation is operative as of October 9, 2002.</u></p>

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AGENDA —July 9, 2003 Business Taxes Committee Meeting

Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption

DIESEL FUEL PREPAYMENT EXEMPTION CERTIFICATE **SECTION 6480.3**

Please Note: This is an exemption only from the prepayment of sales tax required by Revenue and Taxation Code (RTC) section 6480.1. This exemption applies only to the prepayment of the sales tax on sales of diesel fuel that you purchase for resale to persons qualifying for the partial exemption from sales and use tax on the sale or use of diesel fuel pursuant to RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. You are not relieved of your obligation to report and pay sales tax on the non-exempt portion of your partially exempt diesel fuel sales or on other retail sales.

DIESEL FUEL SELLER'S NAME

DIESEL FUEL SELLER'S ADDRESS (Street, City, State, Zip Code)

I, the undersigned diesel fuel retailer, hereby certify that, of the diesel fuel purchased for resale from the above diesel fuel seller, I reasonably expect that _____ % will be sold to consumers engaged in farming activities or food processing who qualify for the diesel fuel partial exemption pursuant to RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. I further certify that:

1. During the calendar year immediately preceding my purchases of diesel fuel, I sold diesel fuel to consumers that qualified for the RTC section 6357.1 and Regulation 1533.2 partial sales and use tax exemption and that these sales were in excess of 25% of my total taxable sales; and,
2. More than 50% of my diesel fuel sales occur through deliveries into storage tanks of 500 gallons or more, or through a cardlock, keylock, or other unattended mechanism, **or both**.

By signing below, I acknowledge I am liable for the taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law or imposed by the Transactions and Use Tax Law, and for the taxes imposed under RTC section 6051.2 or 6201.2, or under section 35 of Article XIII of the California Constitution. I also acknowledge I am liable for all sales taxes on any portion of the gross receipts derived from the sale of diesel fuel not sold in a manner that qualifies for the partial exemption under RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. I further acknowledge that I am required to report and pay these taxes with the return for the reporting period in which I sell the diesel fuel.

I understand that any person who gives this diesel fuel prepayment exemption certificate for the purpose of evading the prepayment of sales tax on sales of diesel fuel that he or she knows at the time of purchase do not qualify for the diesel fuel prepayment exemption is guilty of a misdemeanor punishable as provided in RTC section 7153. I also understand that such person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each diesel fuel prepayment exemption certificate issued for personal gain or to evade the prepayment or payment of taxes.

Important: This diesel fuel prepayment exemption certificate constitutes a blanket diesel fuel prepayment exemption certificate for future purchases and is only valid during the calendar year in which it is provided to the diesel fuel seller unless the diesel fuel prepayment exemption certificate is otherwise specified as a specific diesel fuel prepayment exemption certificate. The diesel fuel seller shall require a retailer to provide a new blanket diesel fuel prepayment exemption certificate for any future purchases of diesel fuel in each subsequent calendar year. If this is a specific diesel fuel prepayment exemption certificate, provide the purchase order or sales invoice number in the following space:

<u>RETAILER'S NAME OR COMPANY NAME</u>		<u>DATE</u>	
<u>SIGNATURE (signature of the retailer, retailer's employee, or authorized representative of the retailer)</u>		<u>TELEPHONE NUMBER</u>	
<u>TITLE</u>		<u>PERMIT NUMBER</u>	
<u>ADDRESS (STREET, CITY, STATE, ZIP CODE)</u>		<u>CUSTOMER ACCOUNT NUMBER</u>	

Appendix

Issue Paper Number **03 - 007**



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Implementation of Senate Bill (SB) 1901 Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption

I. Issue

Should the Board adopt proposed Regulation 1598.1, *Diesel Fuel Prepayment Exemption*, to implement the provisions of Senate Bill 1901, which provides an exemption from the prepayment of sales tax on certain sales of diesel fuel?

II. Staff Recommendation

Staff recommends adoption of the proposed regulation, which:

- Defines terms used in Senate Bill (SB) 1901.
- Clarifies criteria under which a seller of diesel fuel may accept a diesel fuel prepayment exemption certificate.
- Provides guidelines on the form of a diesel fuel prepayment exemption certificate.
- Clarifies a retailer's liability for tax when the diesel fuel is resold.
- Explains the penalties for misuse of a diesel fuel prepayment exemption certificate.
- Includes an operative date of October 9, 2002, which is based on the operative date of the enabling statute.

Text of the proposed regulation is provided in Exhibit 2.

See Agenda Item 1 and Issue Paper pages 4-7.

III. Other Alternative(s) Considered

Do not adopt the proposed regulation.

Issue Paper Number: **03 - 007**

IV. Background

Effective September 1, 2001, Assembly Bill (AB) 426 provides for sales and use tax relief for various industries in California. One form of relief, as enacted by Revenue and Taxation Code (RTC) section 6357.1, authorizes an exemption from the state portion of the sales and use tax (currently 5 percent) on sales of diesel fuel to persons who use the fuel in farming activities or food processing. While this exemption has reduced the operating expenses for farmers, ranchers and food processors, it also has had the unintended consequence of causing cash flow problems for certain diesel fuel retailers.

Under RTC section 6480.1, retailers of diesel fuel are required to prepay sales tax on sales of diesel fuel sold to them by sellers. As of April 1, 2003, the rate is 7.0 cents per gallon.¹ The retailers are normally reimbursed for the sales tax prepayment when they collect the sales and use tax on sales of the diesel fuel to consumers. However, when retailers make partially exempt sales pursuant to RTC section 6357.1, the consumers reimburse them only for local sales tax and any applicable district tax. Depending on the selling price of the diesel fuel, the reimbursement rate on these sales is approximately three to five cents per gallon. As a result, some diesel fuel retailers overpay sales tax to the Board and are due a refund when they file their sales and use tax returns. For retailers who make substantial sales of the partially exempt diesel fuel, the overpaid tax may be a significant portion of their working capital.

To provide faster refunds to these retailers, the Board initiated an expedited refund process. This process puts affected retailers on a monthly reporting basis and fast-tracks refund review and approval. The expedited process refunds overpayments within a month after the Board receives a retailer's sales and use tax return. However, some retailers still experience cash flow problems. A monthly return is normally due at the end of the month following each monthly reporting period. For example, the April sales and use tax return is due on May 31. As a result, the retailers may not receive refunds for six to eight weeks after making the actual overpayment of prepaid tax.

To address the cash flow problems of diesel fuel retailers that were caused by RTC section 6357.1, the Legislature passed Senate Bill (SB) 1901 (Stats. 2002, Ch. 446). Operative October 9, 2002, SB 1901 enacted RTC section 6480.3 (see Exhibit 3), which provided an exemption from the sales tax prepayment on certain sales of diesel fuel being purchased for resale. To qualify for the diesel fuel prepayment exemption, a retailer of diesel fuel for resale must provide a diesel fuel prepayment exemption certificate to the seller, as prescribed by the Board.

In addition, retailers must:

- Resell the diesel fuel to a consumer who uses it in a manner that qualifies, or would have qualified, for the partial sales and use tax exemption allowed by RTC section 6357.1. That is, persons engaged in farming activities or food processing as defined by Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, must use the diesel fuel. Sales to such persons must be greater than 25 percent of total taxable sales in the year prior to claiming the exemption.
- Deliver the fuel they sell primarily through bulk deliveries or through a cardlock, keylock, or other unattended mechanism, or both. "Bulk deliveries" means transfers of diesel fuel into storage tanks of 500 gallons or more.

¹ RTC section 6480.1 sets the prepayment rate using the formula: 80 percent of the combined state and local sales tax rate on the arithmetic average selling price. Historically, the prepayment rate has been set annually. The previous rate was 7.5 cents per gallon.

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To implement RTC section 6480.3, staff developed and published a specific diesel fuel prepayment exemption certificate for claiming an exemption from the prepayment of sales tax on sales of diesel fuel purchased for resale. This form, BOE-230-E, was provided to diesel fuel retailers in early November 2002 to enable qualified retailers to claim the exemption as soon as possible after its October 9, 2002 operative date. However, staff was of the opinion that certain provisions in RTC section 6480.3 needed clarification and that a regulation was advisable. A sample of Form BOE-230-E is attached as an Appendix to the proposed regulation.

Staff held interested parties meetings on March 19 and May 1, 2003 to discuss the proposed regulation and suggestions submitted by representatives from the California Independent Oil Marketers Association (CIOMA) and the Chevron Texaco Corporation (Chevron). A number of changes were incorporated into the proposed regulation as a result of these discussions, including changes to Form BOE-230-E. Based on various contacts between staff and interested parties, it does not appear that interested parties have any further disagreements regarding the proposed regulation, which is being submitted as an agreed-to item.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends adoption of proposed Regulation 1598.1, which has the following provisions:

- Subdivision (a) provides definitions of terms used in RTC section 6480.3 and in the proposed regulation, including “bulk deliveries,” “cardlock,” “diesel fuel consumer,” “diesel fuel,” “qualified retailer,” “seller,” and “total taxable sales.”
- Subdivision (b) clarifies the application of the diesel fuel prepayment exemption to sales of diesel fuel for resale. This subdivision restates the criteria enacted by RTC section 6480.3. This subdivision also provides guidelines for calculating the percentage of partially exempt diesel sales included in total taxable sales.
- Subdivision (c) provides guidelines on properly completing and furnishing a diesel fuel prepayment exemption certificate. It provides the criteria for a blanket certificate and elements that must be present if a retailer chooses to use a document other than the Board’s Form BOE-230-E. The subdivision also provides guidelines for retention of exemption certificates and criteria for accepting an exemption certificate in good faith.
- Subdivision (d) restates provisions from RTC section 6480.3 concerning a retailer’s liability for payment of tax on sales of diesel fuel acquired without prepayment of retail sales tax. A retailer is responsible for reporting local and district taxes on a sale of partially exempt diesel fuel and must report the full rate of tax on any sales of diesel fuel not subject to the partial exemption.
- Subdivision (e) restates the provisions of RTC section 6480.3 concerning penalties that apply to the misuse of a diesel fuel prepayment exemption certificate.
- Subdivision (f) includes provisions concerning the maintenance of records.

Issue Paper Number: **03 - 007**

- Subdivision (g) provides the operative date.

B. Pros of the Staff Recommendation

- Clarifies the criteria that must be met for claiming a diesel fuel prepayment exemption.
- Provides an updated diesel fuel prepayment exemption certificate.

C. Cons of the Staff Recommendation

Requires adoption of a new regulation.

D. Statutory or Regulatory Change

No statutory change is required; however, staff's recommendation does require the adoption of a new regulation.

E. Administrative Impact

At a minimum, staff will be required to notify taxpayers of the proposed regulation through an article in the Tax Information Bulletin (TIB) and distribution of the adopted regulation.

F. Fiscal Impact

1. Cost Impact

There will be no additional costs. Staff will notify taxpayers of the new regulation through a TIB article. The workload associated with the publication and distribution of the TIB is considered routine and any corresponding cost would be within the Board's existing budget.

2. Revenue Impact

None. The proposed regulation clarifies existing statute RTC 6480.3. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Will enhance taxpayer/customer understanding of the diesel fuel prepayment exemption provided by RTC sections 6480.3.

H. Critical Time Frames

The proposed regulation represents an interpretation of RTC 6480.3 with an operative date of October 9, 2002. Implementation will take place 30 days following approval of the regulation by the State Office of Administrative Law.

VI. Alternative 1

A. Description of the Alternative

Do not adopt proposed Regulation 1598.1, *Diesel Fuel Prepayment Exemption*.

B. Pros of the Alternative

No regulatory action required.

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C. Cons of the Alternative

Does not clarify the provisions of RTC section 6480.3.

D. Statutory or Regulatory Change

None

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Diesel fuel sellers and retailers will not receive clarification regarding the applicability of and required documentation for the diesel fuel prepayment exemption enacted by RTC section 6480.3.

H. Critical Time Frames

None.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: June 17, 2003

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BOARD OF EQUALIZATION
REVENUE ESTIMATE

**Implementation of Senate Bill (SB) 1901
Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption**

Recommendation and Alternatives

Staff recommends adoption of the proposed regulation, which:

- Defines terms used in Senate Bill (SB) 1901.
- Clarifies criteria under which a seller of diesel fuel may accept a diesel fuel prepayment exemption certificate.
- Provides guidelines on the form of a diesel fuel prepayment exemption certificate.
- Clarifies a retailer's liability for tax when the diesel fuel is resold.
- Explains the penalties for misuse of a diesel fuel prepayment exemption certificate.
- Includes an operative date of October 9, 2002, which is based on the operative date in the enabling statute.

Alternative 1

Do not adopt the proposed regulation.

Background, Methodology, and Assumptions

Staff Recommendation:

There is nothing in the proposed new Regulation 1598.1 that would impact revenues, since it merely implements and clarifies the provisions of SB 1901.

Alternative 1:

Alternative 1 has no revenue impact.

Revenue Summary

The staff recommendation has no revenue impact.

The alternative proposal has no revenue impact.

Preparation

Bill Benson, Jr., Research and Statistics Section prepared this revenue estimate. Mr. Dave Hayes, Manager, Research and Statistics Section and Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of June 3, 2003

Proposed Regulation 1598.1. Diesel Fuel Prepayment Exemption

Reference: Section 6357.1, 6480, 6480.1, and 6480.3, Revenue and Taxation Code

(a) DEFINITIONS.

(1) "Bulk deliveries" mean transfers of diesel fuel into storage tanks holding 500 gallons or more.

(2) "Cardlock, keylock, or other unattended mechanism" means an unattended, completely automated fueling station at which a purchaser obtains diesel fuel through use of a coded card or key and an access code. Charges for sales of diesel fuel to customers are usually consolidated at a central location and periodically invoiced to the purchaser.

(3) A "diesel fuel consumer" or "diesel fuel consumers" mean a person or persons that use diesel fuel in a manner that qualifies for the partial sales and use tax exemption set forth in Revenue and Taxation Code section 6357.1 and Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing.

(4) "Diesel fuel," for purposes of the imposition of the prepayment of sales tax, is defined in Revenue and Taxation Code section 6480(c) (by reference to Revenue and Taxation Code section 60022) and means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

Diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

Diesel fuel does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.

(5) "Qualified retailer" means a person who meets the requirements of subdivisions (b)(1) through (b)(5).

(6) "Seller" means either the supplier or the wholesaler, as those terms are defined in Revenue and Taxation Code section 6480(c), that sells diesel fuel to a qualified retailer.

(7) "Total taxable sales" means the gross receipts from the sale of tangible personal property subject to tax, including sales of diesel fuel.

(b) APPLICATION OF TAX. Commencing on and after October 9, 2002, a seller of diesel fuel is not required to collect the prepayment of sales tax on that percentage of diesel fuel specified in the retailer's diesel fuel prepayment exemption certificate that is otherwise required by Revenue and Taxation Code section 6480.1, provided the diesel fuel is sold to a retailer who:

(1) Will resell the diesel fuel in the ordinary course of business.

(2) Issues a diesel fuel prepayment exemption certificate to the seller as set forth in subdivision (c).

(3) Sells diesel fuel to a diesel fuel consumer.

(4) During the calendar year immediately preceding any purchases of diesel fuel, sold diesel fuel to diesel fuel consumers in which the gross receipts from such sales exceeded 25 percent of that retailer's total taxable sales, and

(5) Sold more than 50% of its diesel fuel through bulk deliveries or through a cardlock, keylock, or other unattended mechanism, or both.

For purposes of calculating the percentage set forth in subdivision (b)(4) above, the numerator shall be the sum total of amounts entered on Form BOE 401GS line 10(e)(4) (Amount Subject to the Diesel Fuel Used in Farming and Food Processing Exemption) for each return filed during the preceding calendar year and the denominator shall be the sum total of amounts entered on line 14(a) (Transactions Subject to County Tax) for each return filed during the preceding calendar year.

(c) PREPAYMENT EXEMPTION CERTIFICATE.

(1) IN GENERAL. A seller of diesel fuel who takes a diesel fuel prepayment exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified retailer, is relieved from the liability for the sales tax prepayment subject to the exemption under this regulation, or the duty of collecting the sales tax prepayment subject to exemption under this regulation. A diesel fuel prepayment exemption certificate will be considered timely if it is taken any time before the seller bills the qualified retailer for the diesel fuel, any time within the seller's normal billing or payment cycle, or any time at or prior to delivery of the diesel fuel to the qualified retailer. A diesel fuel prepayment exemption certificate which is not taken timely will not relieve the seller of the liability for the sales tax prepayment excluded by the exemption; however, the seller may present satisfactory evidence to the Board that the seller sold the diesel fuel to a qualified retailer. A diesel fuel prepayment exemption under this part shall not be allowed unless the seller claims the exemption on its sales and use tax return for the reporting period during which the transaction subject to the diesel fuel prepayment exemption occurred. The diesel fuel prepayment exemption certificate form set forth in the Appendix may be used to claim the diesel fuel prepayment exemption.

(2) BLANKET PREPAYMENT EXEMPTION CERTIFICATE. In lieu of requiring a diesel fuel prepayment exemption certificate for each transaction, a qualified retailer may issue a blanket diesel fuel prepayment exemption certificate. The diesel fuel prepayment exemption certificate form set forth in the Appendix may be used as a blanket diesel fuel prepayment exemption certificate. The diesel fuel prepayment exemption certificate in the Appendix may also be used as a specific diesel fuel prepayment exemption certificate if the qualified retailer provides the purchase order or sales invoice number and a precise description of the property being purchased. A blanket diesel fuel prepayment exemption certificate is only valid during the calendar year in which it is provided to the seller.

(3) FORM OF PREPAYMENT EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the qualified retailer to the seller will be regarded as a diesel fuel prepayment exemption certificate with respect to the sale of diesel fuel if it contains all of the following essential elements:

(A) The signature of the qualified retailer, qualified retailer's employee, or authorized representative of the qualified retailer.

(B) The name, address and telephone number of the qualified retailer.

(C) The number of the seller's permit held by the qualified retailer.

(D) A statement setting forth the requirements of subdivisions (b)(1) through (b)(5).

(E) A statement of what percentage of total diesel fuel purchases will be resold to diesel fuel consumers.

(F) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PREPAYMENT EXEMPTION CERTIFICATES. A seller must retain each diesel fuel prepayment exemption certificate received from a qualified retailer who purchases diesel fuel for resale to diesel fuel consumers for a period of not less than four years from the date on which the qualified retailer claims an exemption for sales tax prepayment based on the diesel fuel prepayment exemption certificate. The Board may require, within 45 days of the Board's request, sellers to provide the Board access to any and all diesel fuel prepayment exemption certificates, or copies thereof, accepted for the purposes of supporting the diesel fuel prepayment exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a diesel fuel prepayment exemption certificate in good faith in the absence of evidence to the contrary. However, a diesel fuel prepayment exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel will not be sold to a retailer who meets the requirements of subdivisions (b)(1) through (b)(5), will not otherwise be used by diesel fuel consumers, or that the percentage listed on the exemption certificate for sales tax prepayment is inaccurate. A blanket diesel fuel prepayment exemption certificate utilized for sales occurring in a subsequent calendar year in which the blanket diesel fuel prepayment exemption certificate was initially provided to the seller is not accepted in good faith for sales occurring in that subsequent calendar year.

(d) RETAILER'S LIABILITY FOR THE PAYMENT OF TAX.

(1) A qualified retailer providing a diesel fuel prepayment exemption certificate pursuant to subdivision (c) is liable for the taxes imposed by the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, and the tax that is imposed under Revenue and Taxation Code section 6051.2 or 6201.2, or under section 35 of article XIII of the California Constitution on the sale of diesel fuel to diesel fuel consumers.

(2) A qualified retailer providing a diesel fuel prepayment exemption certificate pursuant to subdivision (c) is liable for sales tax on any portion of the gross receipts derived from the sale of diesel fuel that is not sold to diesel fuel consumers.

(3) A qualified retailer that is liable for the tax under the provisions of subdivisions (d)(1) or (d)(2) shall report and pay that tax with the sales and use tax return filed for the reporting period during which the qualified retailer sells the diesel fuel.

(e) IMPROPER USE OF PREPAYMENT EXEMPTION CERTIFICATE. Any person who gives a diesel fuel prepayment exemption certificate pursuant to this regulation for the purpose of evading the prepayment of sales tax on sales of diesel fuel that he or she knows at the time of sale do not qualify for the diesel fuel prepayment exemption is guilty of a misdemeanor punishable as provided in Revenue and Taxation Code section 7153. In addition, such person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each diesel fuel prepayment exemption certificate issued for personal gain or to evade the prepayment of sales tax.

(f) RECORDS. Adequate and complete records must be maintained by the seller and qualified retailer as evidence that the diesel fuel qualifies for the diesel fuel prepayment exemption.

(g) OPERATIVE DATE. This regulation is operative as of October 9, 2002.

DIESEL FUEL PREPAYMENT EXEMPTION CERTIFICATE
SECTION 6480.3

Please Note: This is an exemption only from the prepayment of sales tax required by Revenue and Taxation Code (RTC) section 6480.1. This exemption applies only to the prepayment of the sales tax on sales of diesel fuel that you purchase for resale to persons qualifying for the partial exemption from sales and use tax on the sale or use of diesel fuel pursuant to RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. You are not relieved of your obligation to report and pay sales tax on the non-exempt portion of your partially exempt diesel fuel sales or on other retail sales.

DIESEL FUEL SELLER'S NAME

DIESEL FUEL SELLER'S ADDRESS (Street, City, State, Zip Code)

I, the undersigned diesel fuel retailer, hereby certify that, of the diesel fuel purchased for resale from the above diesel fuel seller, I reasonably expect that _____ % will be sold to consumers engaged in farming activities or food processing who qualify for the diesel fuel partial exemption pursuant to RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. I further certify that:

1. During the calendar year immediately preceding my purchases of diesel fuel, I sold diesel fuel to consumers that qualified for the RTC section 6357.1 and Regulation 1533.2 partial sales and use tax exemption and that these sales were in excess of 25% of my total taxable sales; and,
2. More than 50% of my diesel fuel sales occur through deliveries into storage tanks of 500 gallons or more, or through a cardlock, keylock, or other unattended mechanism, or both.

By signing below, I acknowledge I am liable for the taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law or imposed by the Transactions and Use Tax Law, and for the taxes imposed under RTC section 6051.2 or 6201.2, or under section 35 of Article XIII of the California Constitution. I also acknowledge I am liable for all sales taxes on any portion of the gross receipts derived from the sale of diesel fuel not sold in a manner that qualifies for the partial exemption under RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. I further acknowledge that I am required to report and pay these taxes with the return for the reporting period in which I sell the diesel fuel.

I understand that any person who gives this diesel fuel prepayment exemption certificate for the purpose of evading the prepayment of sales tax on sales of diesel fuel that he or she knows at the time of purchase do not qualify for the diesel fuel prepayment exemption is guilty of a misdemeanor punishable as provided in RTC section 7153. I also understand that such person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each diesel fuel prepayment exemption certificate issued for personal gain or to evade the prepayment or payment of taxes.

Important: This diesel fuel prepayment exemption certificate constitutes a blanket diesel fuel prepayment exemption certificate for future purchases and is only valid during the calendar year in which it is provided to the diesel fuel seller unless the diesel fuel prepayment exemption certificate is otherwise specified as a specific diesel fuel prepayment exemption certificate. The diesel fuel seller shall require a retailer to provide a new blanket diesel fuel prepayment exemption certificate for any future purchases of diesel fuel in each subsequent calendar year. If this is a specific diesel fuel prepayment exemption certificate, provide the purchase order or sales invoice number in the following space:

RETAILER'S NAME OR COMPANY NAME		DATE
SIGNATURE (signature of the retailer, retailer's employee, or authorized representative of the retailer)		TELEPHONE NUMBER
TITLE	PERMIT NUMBER	
ADDRESS (STREET, CITY, STATE, ZIP CODE)		CUSTOMER ACCOUNT NUMBER

Revenue and Taxation Code Section 6480.3

6480.3. (a) A person qualified under subdivision (b) may issue a certificate to a seller with respect to the amount of sales tax required to be prepaid pursuant to Section 6480.1 when purchasing diesel fuel from the seller. The certificate shall be completed in accordance with any instructions or regulations as the board may prescribe, and shall clearly specify that the person will purchase the volume of diesel fuel that the person reasonably expects he or she will sell that qualifies for the exemption under Section 6357.1. A seller that receives a properly completed certificate from a person qualified under subdivision (b) shall not be required to collect the prepayment of the retail sales tax otherwise required in Section 6480.1 on that volume of the diesel fuel sold pursuant to the certificate.

(b) A person is qualified for purposes of this section if both of the following conditions are met:

(1) The person sold diesel fuel that was used by the consumer in a manner that qualified, or would have qualified for an exemption under Section 6357.1, and in the prior year, those sales totaled more than 25 percent of the person's total taxable sales.

(2) The person's sales consist primarily of either bulk deliveries of fuel or of fuel sales through a cardlock, keylock, or other unattended mechanism, or both. For purposes of the preceding sentence, "bulk deliveries" means transfers of fuel into storage tanks of 500 gallons or more.

(c) A person issuing a certificate pursuant to this section is liable for sales tax that is imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) and sales tax that is imposed under Section 6051.2 or 6201.2, or under Section 35 of Article XIII of the California Constitution.

(d) A person issuing a certificate pursuant to this section shall be liable for sales tax on any portion of the gross receipts derived from the sale of fuel that is not sold in a manner that qualifies for an exemption under Section 6357.1.

(e) A person liable for the sales tax under subdivision (c) or (d) of this section shall report and pay that sales tax with the return for the reporting period in which the person sells the fuel.

(f) Any person who gives a certificate pursuant to this section for purchases of diesel fuel that he or she knows at the time of purchase do not qualify for the exemption from the prepayment pursuant to this section for the purpose of evading payment of the prepayment of the retail sales tax is guilty of a misdemeanor punishable as provided in Section 7153. In addition, the person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each certificate issued for personal gain or to evade the payment of taxes.